

**City of Berlin, NH
Zoning Board of Adjustment
Meeting Minutes
November 28, 2022**

Members Present: Dana Hoyt, Tiffany Hale, Greg Marrer, Scott Losier and Mark Evans

Members Excused:

Members Absent: David J. Lavallee Sr.

Others Present: Luc Perreault, applicant

Others Present at City Hall: Michel Salek, Building Inspector/Zoning Officer;
Jennifer Ouellet, Code Enforcement Administrative Clerk/recorder of minutes

The meeting was called to order at 6:30 pm.

Roll call was taken:

Dana Hoyt-present

Tiffany Hale-present

Scott Losier-present

Greg Marrer-present

Mark Evans-present

Approval of October 2022 Minutes:

Tiffany Hale asked to amend the Roll call taken to reflect Scott Losier was present. Motion was seconded by Mr. Losier. A vote was taken of each member by Mr. Hoyt, chair of the board and all members voted in favor, the motion to approve the October 2022 minutes passed.

Case 05-22: Luc Perreault, 364 Derrah Street, Map 133, Lot 20 Variance

Chair Hoyt then moved to the Reading of Zoning Board of Adjustment Rules:

The Building Inspector and/or Zoning Officer is required to follow the strict letter of the Ordinance while the Board of Adjustment is required to follow the intent and spirit of the Ordinance. Our function is to hear both sides, use judgment within the Ordinance, and render a decision in writing, within a reasonable time. The main purpose of the public hearing is to allow property owners and anyone concerned with the case to testify how the proposed variance (or special exception) will affect them and their property. The reason for these hearings is not to gauge the sentiment of the public or to hear personal reasons why individuals are for or against the appeal. While the evidence may be in the form of an opinion rather than an established fact; it should support the grounds which the board must consider

when making a determination.. During the hearing, all persons wishing to speak will raise their hands, be recognized, give their names, address and interest in the case, then be sworn. If you wish, it is your right to be represented by counsel.

Please address all your questions and statements to the Board and not to any individual in this room. In order to give everyone a chance, no one will be allowed to speak a second time until all persons have been given a chance to speak for the first time...and the petitioner will be given the last word. If you feel any member of this board is prejudiced for or against your case, please let me know and if the facts warrant it, they will abstain from participating or voting in your case. I want you to know that although the board is to be impartial, it must abide by the intent and spirit of the ordinance and cannot rewrite the ordinance to please any particular individual.

Mr. Marrer read the request into the record.

Request: Case#05-22: The request for a Variance for 364 Derrah Street, Tax Map 133 Lot 20 in the Residential Two-Family Zone. If permitted would allow: a front-yard set-back distance of 9'-6' for accessory building. This request comes under Article VII, Section 17-74 under the Berlin Zoning Ordinance.

Luc Perreault of 364 Derrah Street, Berlin, NH was sworn in by Chair Hoyt.

Mr. Perreault thanked the board for allowing him the opportunity to present his case. He apologized for incorrectly identifying on the application the existing front yard setback to his existing home as 19 feet instead of 13 feet which is the correct measurement to the back of the six-foot-wide sidewalk representing the edge of the City's Right of Way. He is requesting a Variance to reduce the required front yard setback for his proposed new garage due to challenging water issues located within the required 25-foot front yard setback. Mr. Perreault also noted that other neighboring properties have structures with 10- foot to 8-foot front yard setbacks. He doesn't feel he is going against the spirit of the ordinance having requested this setback.

Chair Hoyt asked if figures on application were correct? Mr. Perreault stated they were and Mr. Salek confirmed this answer.

Mrs. Hale asked if the accessory building would be a new building. Mr. Perreault answered yes it will be.

Chair Hoyt mentioned Mr. Perreault's water source on property will help in the occurrence of a Zombie Apocalypse.

Mr. Evans asked how far is house from setback? Mr. Perreault didn't have his paperwork but answered when he measured he measured from edge of road which would make a 13-foot setback.

Chair Hoyt questioned one of the applicant's photos that he submitted what he was looking at? Mr. Perreault answered it was the cement slab form that hasn't been poured yet.

Chair Hoyt asked if there were any more questions from the board.

No more questions from board. Mr. Salek requested that the board members correct the setback shown on application from 19 feet to 13 feet to account for the 6-foot-wide sidewalk located in front of the house.

Chair Hoyt asked if there were public comments in favor of the applicant. An email was read by Mrs. Ouellet from abutter Robbie Miller of 733 Marble Street. It read "Good morning, my name is Robbie Miller of 733 Marble St., neighbor of Luc Perreault...I'm responding to a letter I received from the City Zoning Board, I believe they are requesting a Variance? I have no issues with them wanting to build or do whatever they want on their property at 364 Derrah St., Berlin...Thank you"

Chair Hoyt asked if there were anyone else to speak in favor of applicant. There was not.

Chair Hoyt asked if there were any other public comments in opposition to the applicant. There was not.

Final words from Mr. Perreault were thanking board for hearing his case.

Chair Hoyt summarized case.

Public Hearing Closed at 6:47 pm. Chair Hoyt advised Mr. Perreault that a decision would be made that evening and a letter of decision would be sent. He was also welcome to wait and be present to hear the Board's deliberations and decision. He was informed that if anyone chose to appeal the decision, the appeal must be filed within thirty days.

Chair Hoyt asked the members for comments on each Variance request. Chair Hoyt read Question 1 of "Individual Board Member Variance Worksheet" which reads Granting the variance (would/would not) be contrary to the **public interest** because: Mrs. Hale answered she didn't feel the applicant's request could be contrary to the public interest. Mr. Evans asked what zone applicant lives in? Chair Hoyt answered the Residential Two-Family Zone. Mr. Evans also agreed it isn't contrary to the public interest. Question 2, Chair Hoyt read the **spirit of the ordinance** (would/would not) be observed because: Chair Hoyt determined spirit of ordinance was the purpose of higher setbacks. Mrs. Hale answered by explaining that the setbacks are City wide and not just neighborhood specific. It isn't a one size fits all situation. Chair Hoyt answered the setbacks are to create space for buildings since City Ordinance was established he doesn't feel too many existing buildings are complying. Question 3, Chair Hoyt read Granting the variance (would/would not) do **substantial justice** because: Chair Hoyt answered that only half of applicant's property is buildable which make space limited. Question 4, Chair Hoyt read for the following reasons the **values of the surrounding properties** (would/would not)

be diminished: Mrs. Hale answered the surrounding properties would not be diminished. Question 5, Chair Hoyt read **Unnecessary Hardship** if denied: Mr. Marrer answered by not granting Variance applicant's items would have to stay outside and not under shelter. Mrs. Hale answered due to natural spring on property it limits applicant's options. She also mentioned looking at the City Map there is no other place to build the accessory building. Chair Hoyt agreed with Mrs. Hale's comments.

Case #05-22 Deliberation

Chair Hoyt did a roll call and had each member vote on each of the 5 Variance questions. Each member voted in favor on each of the five criteria.

Case #05-22 Decision

Mr. Marrer made a motion to Grant a Variance in Case #05-22.

Mr. Losier seconded the motion, the Board took a vote, and voted unanimously in favor.

Member Comments: Chair Hoyt requested updating the Variance Worksheet to coincide with the Variance application.

Other Business:

Meeting Adjourned: Mr. Losier made a motion to adjourn, seconded by Mrs. Hale. All members voted in the affirmative on a roll call vote and the meeting adjourned at 7:04 pm.

Respectfully submitted, Jennifer Ouellet

** Note: These minutes are unofficial until they have been accepted by the Zoning Board of Adjustment by motion.*